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JAN 27 2010

TOWN CLERK, ACTON

Board of Appeals

NOTICE OF PUBLIC HEARING

The Board of Appeals will hold a Public Hearing on Monday, March 8, 2010 at 8:00 PM in Room 126 of the Town Hall.

on the following petition:

Hearing # 10-02

**Powder Mill Properties, LLC for a Petition for
Review under Section 10.1.1 of the Acton Zoning
bylaw to appeal the decision of the Zoning
Enforcement Officer set forth in a letter dated
January 22, 2010 determining that the proposed
renovations are in violation of the Zoning bylaw.
The property is located at 50 Powder Mill Rd.
Map J3-Parcel 49.**

Petitioner must be present, or send authorized representative

BOARD OF APPEALS

Ken Kozik

Chairman



TOWN OF ACTON
472 Main Street
Acton, Massachusetts, 01720
Telephone (978) 264-9632
Fax (978) 264-9630

**Board of Appeals
Hearing # 10-02**

A public hearing of the **Acton Board of Appeals** will be held in the Town Hall on **Monday, March 8, 2010 at 8:00 PM** on the petition by Powder Mill Properties, LLC for a **Petition for Review under Section 10.1.1** of the Acton Zoning bylaw to appeal the Decision of the Zoning Enforcement Officer set forth in a letter dated January 22, 2010 determining that the Proposed renovations are in violation Of the Zoning bylaw. The property is Located at 50 Powder Mill Rd. Map J3-Parcel 49.

Date Received
TOWN CLERK
Jan 26, 2010
By: *[Signature]*



TOWN OF ACTON
MASSACHUSETTS

RECEIVED
JAN 26 2010
By: *[Signature]*
ACTON BOARD OF APPEALS

BOARD OF APPEALS
(FORM 1)
PETITION FOR REVIEW

January 19 ^{x09} 2010

(See (1) Below)

I/We hereby petition the Board of Appeals for a public hearing under Section 11.1.1 of the Zoning By-Law to review (a) the refusal of the ~~Zoning Enforcement Officer~~ to grant a permit under Section _____ of the Zoning By-law to allow: (b) the refusal of the Building Commissioner to enforce the provisions of Section _____ of the Zoning By-Law as follows: (Strike out inapplicable language)

To allow the petitioner to rebuild his building
at 50 Powder Mill Road.

Date of Building
Commissioner's Action _____

(1) Petition must be filed within 30 days of refusal date with copy of decision or order attached.

OFFICE USE ONLY
Seven
Four copies of petition? _____
[Redacted]
[Redacted]
Additional _____?
[Redacted] and other
[Redacted]
Fee - \$100.00/1-25 abutters
\$125.00/26+ abutters? _____
Next Hearing Date? _____ No _____

Respectfully submitted

Signed Powder Mill Properties, LLC.

(Petitioner)

Name Leo Bertolami

Address 15 Sea View Ave, Wianno, MA.

Phone # 978-430-4000

Signed *[Signature]* Manager

(Owner of Record)

Name Same

Address _____

Phone # _____

The Board of Appeals has the power and duty to hear and decide appeals (Section 11.1.1) from a decision of the Building Commissioner.



Old North Bridge

WAYSIDE MANAGEMENT CORPORATION
Property Development

794 Elm Street
Concord, MA 01742
TEL 978-369-4000
TEL 978-263-2000
FAX 978-263-8100

Acton Zoning Board of Appeals
472 Main Street
Acton, MA 01712

January 21, 2010

Re: Denial by Zoning Enforcement Officer
For Renovation of 50 Powder Mill Road

Dear Board Members:

Please accept this letter and the accompanying materials as my request for relief from the Zoning Enforcement Officer's denial of permits that would allow the renovation of the existing building at 50 Powder Mill Road.

If the renovations cannot be accomplished the structure will continue to deteriorate and cause the site to be blighted.

Sincerely,

Leo Bertolami, Manager



Planning Department

TOWN OF ACTON
472 Main Street
Acton, Massachusetts 01720
Telephone (978) 264-9636
Fax (978) 264-9630
planning@acton-ma.gov

INTERDEPARTMENTAL COMMUNICATION

To: Town of Acton Building Department/Applicant

Date: January 22, 2010

From: Scott A. Mutch, Zoning Enforcement Officer & Assistant Town Planner

Subject: 50 Powder Mill Road Proposed Alterations to Existing Structure
2nd Review

Dear Applicant,

The Planning Department has reviewed your submitted building permit application and has the following comments.

NOTE: The building permit application submitted to staff for review is somewhat incomplete. There is not sufficient information provided to fully understand the complete scope of work that the applicant is actually proposing. This letter is based upon the most recent architectural plan submissions which were filed with the Building Department and part of the building permit application currently undergoing review. The architectural drawings include the following:

- 1) First Floor Plan, drawn by E.J. Rempelakis Associates, dated June 8, 2010;
- 2) Second Floor Plan, drawn by E.J. Rempelakis Associates, dated June 23, 2009 (revised July 23, 2009);
- 3) Front Elevation, drawn by E.J. Rempelakis Associates, dated January 7, 2010.

For the purposes of Planning & Zoning, the subject property – as it currently exists today – is deemed to be pre-existing non-conforming.

- The far eastern portion of the existing building currently consists of only a single story space with a pitched roof which ties back into the existing second story of the rest of the building. The proposed drawings indicate that this existing one story portion will be modified and raised to become and create an extension of the second floor and ultimately create additional Floor Area Ratio square footage. The lot as currently exists is deemed to be legal, non-conforming with regards to FAR and this creation of additional FAR square footage can not be approved.
- The original architectural drawings submitted included a note on Page A-1 which stated "Existing wood columns, wood beams and flooring above do not meet code load

requirements according to structural engineers analysis and report. New structure to be designed by structural engineer for proper floor load." There is also a second note provided indicating "Existing columns and beams to be removed." **BOTH OF THESE COMMENTS HAVE BEEN OMITED ON THE MOST RECENTLY SUBMITTED ARCHITECTURAL DRAWINGS.** Without the proper structural engineering drawings being submitted for staff review and understanding of the proposed modifications, the existence of these notes would seem to imply that the existing second floor is to be completely removed and then be reconstructed. The removal of the existing second floor system and its replacement IS NOT permitted under the Zoning Bylaw. Once any FAR square footage is removed which is in excess of the maximum permitted under the terms of the Bylaw, IT CAN NOT be replaced or put back, regardless of whether or not the resulting overall ending numbers are consistent with pre-existing conditions. Should an existing structure exceed the maximum permitted FAR requirements, and any proposed alteration or modification be proposed which reduces the overall FAR numbers, that modification would be received favourably.

Included in the original building permit application is a letter from Michael J. Berry, P.E., Consulting Structural Engineer, Inc. dated June 30, 2009 which states "The proposed second floor and existing roof will be supported by a structural frame including up to 9 interior columns and frames from front to back to support the existing roof and second floor loading". Again, without the necessary structural engineering drawings being submitted for staff to review, it appears that a completely new and self supporting structure is being proposed to be constructed.

- The proposed modifications to the exterior façade of the structure are a significant deviation in nature from the existing conditions. The applicant is proposing the introduction of 6 new 10'-0" wide by 12'-0" high divided light glass panel overhead garage bay doors. It would seem that these glass panel doors would be consistent and reminiscent of the era and style with which this building was originally constructed. However, before I can sign-off and approve the pending building permit for the subject property, I am recommending that the applicant schedule a time to meet with the Design Review Board and present their current proposal for further review and input. I recognize that I do not have the authority to require the applicant to appear before the Design Review Board, but in this instance, I believe it would be beneficial if the applicant were to do so. The Design Review Board can be contacted directly through the Town of Acton's website in order to schedule a time.
- Although there is no site plan submitted which shows the existing building or layout, the submitted building permit plans are calling for a new bathroom and staircase to be constructed on the rear of the building. Both of these areas are exempt from the Floor Area Ratio calculations, however, it is unclear if this is new construction. New construction would require the submission of a site plan which provides and indicates setbacks to the new structure.
- Section 4.1.8 of the Town of Acton's Zoning Bylaw requires that the proposed scope of work obtain a Special Permit from the Zoning Board of Appeals to allow the USE within the Limits of the Floodway Fringe. In order for the Board of Appeals to grant the Special Permit, the Board of Appeals would have to find and conclude that "the elevation of the



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Phone: 978-263-3666 Fax: 978-635-0218
actonsurvey@actonsurvey.com

ASE 5781B26

January 26, 2010

Acton Zoning Board of Appeals
427 Main Street
Acton, MA 01720

Re: Appeal Of Zoning Enforcement Officer's Determination
50 Powder Mill Road

Dear Board Members:

Dear Board Members:

As requested by our client, Leo Bertolami, this letter is to request that the Board incorporate an appeal to the Zoning Enforcement Officer's determination that the proposed renovations to the building at 50 Powder Mill Road are in violation of the Zoning Bylaw.

The reasons for this appeal are summarized below and if Town Staff should require any additional information prior to the Board considering this appeal or prior to any Public Hearing please inform us.

1. Floor Area Ratio - FAR

The FAR for the renovated building is shown on the attached calculations to be 0.183 which is below the 0.20 ratio required by the Bylaw.

Our client proposes to abandon the use of the basement of the structure. This coupled with the removal of the building at 56 Powder Mill Road will result in a decrease in the FAR.

2. Second Floor and Roof

The quoted Berry letter refers to the "existing roof" which is to be supported by a structural frame. The roof is to remain and the second floor is to remain, although significant structural components must be replaced.

3. Façade

Substantial changes are to be made to the buildings exterior appearance, however this is not a zoning issue.

4. Rear Bump Out

The "bump out" at the rear of the building exists, on the first floor only, and is not shown to contain a bathroom on the plans.

5. Flood Plain

The elevation of the first floor is to be 138.0 and above the 100 year flood elevation of 137.8 shown on the flood profile downstream of the High Street Dam. Elevation 138 is shown on the FIRM Map.

As stated, the basement is to be abandoned which involves the replacement of the foundation and filling the existing basement to support the first floor slab. All components of the concrete foundation surrounding the compacted earthen backfill will be able to resist forces resulting from the 100 year flood event.

SUMMARY

The proposed renovations of 50 Powder Mill Road will allow the building to become in conformance with the FAR requirements of the Zoning Bylaw and while the structural improvements required to bring the structure into safe usage will be extensive, they should not be considered as consisting of replacing the first and second floors or the roof.

The renovations of the building will result in the lowest habitable floor being situated above the 100 year flood.

The reasons presented by the Zoning Enforcement Officer finding that the proposed renovations of the building are in violation of Zoning are invalid and serves as a manifest injustice as it denies our clients ability to maintain his property in a profitable manner.

Since purchasing the property our client has removed storage trailers, decrepit out buildings, barrels and debris. An easement for a "river walk" has been provided to the Town. The parking lot has been paved and stormwater management works approved by the Conservation Commission have been constructed.

Thank you for any consideration you may give to this matter.

Very truly yours,
Mark T. Donohoe, PE

for:

Acton Survey & Engineering, Inc.

cc: Leo Bertolami
Town Clerk
Building Commissioner
Zoning Enforcement Officer



Acton Survey &
Engineering, Inc.

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Acton, MA 01720-0666
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JOB 50 POWDER MILL RD 5781

SHEET NO. 1 OF 2

CALCULATED BY MTD DATE 1-25-10

CHECKED BY _____ DATE _____

SCALE _____

50 POWDER MILL ROAD

SIMPLIFIED FLOOR AREA RATIO CALCULATION

BASED ON E.J. REMPELAKIS PLANS 6-8-2009 1ST FLOOR
7-22-2009 2ND FLOOR

FIRST FLOOR

GROSS FLOOR AREA

$$\begin{array}{rcl} 30.25 \times 119.66 & = & 3620.51 \\ 6.83 \times 11.23 & = & 77 - 1 \text{ STORY} \\ 16.5 \times 10.00 & & 165 \\ \hline & & 3862 \end{array}$$

$$\begin{array}{rcl} \text{WEST STAIRS } 5.4 \times 4.25 + 16.0 \times 4.25 & = & 91 \\ \text{TECH BATH ROOMS } 16.0 \times 7.2 & = & 115 \\ \text{JANITOR CL } 4.0 \times 4.5 & = & 18 \\ & & * \text{ DOES NOT INCLUDE LOCKER ROOM} \end{array}$$

$$\begin{array}{rcl} \text{BACK STAIRS} & & 165 \\ \text{CUST BATH } 13.0 \times 6.75 & & 88 \\ \hline & & 477 \end{array}$$

$$\text{NET FLOOR AREA } 3862 - 477 = 3385$$

SECOND FLOOR

$$\text{GROSS FLOOR AREA } 3620 + 165 = 3785$$

$$\begin{array}{rcl} \text{WEST STAIRS } 28.58 \times 4.25 + 3.5 \times 4.25 & = & 136 \\ \text{JANITOR CLOSET } 3.75 \times 6.0 & = & 22 \\ \text{BATH ROOMS } 13.5 \times 10.4 & = & 141 \end{array}$$

$$\begin{array}{rcl} \text{BACK STAIRS} & & 165 \\ \hline & & 464 \end{array}$$

$$\text{NET FLOOR AREA } 3785 - 464 = 3321$$



Acton Survey &
Engineering, Inc.

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JOB 50 POWDER MILL RD 5781

SHEET NO. 2 OF 2

CALCULATED BY MTD DATE 1-25-10

CHECKED BY _____ DATE _____

SCALE _____

TOTAL NET FLOOR AREA

$$3,385 + 3321 = \underline{6,706 \text{ SF}}$$

$$\text{LOT AREA} = 38,849 \text{ SF}$$

$$\underline{\text{FAR}} \quad 6,706 / 38,849 = \underline{0.173}$$

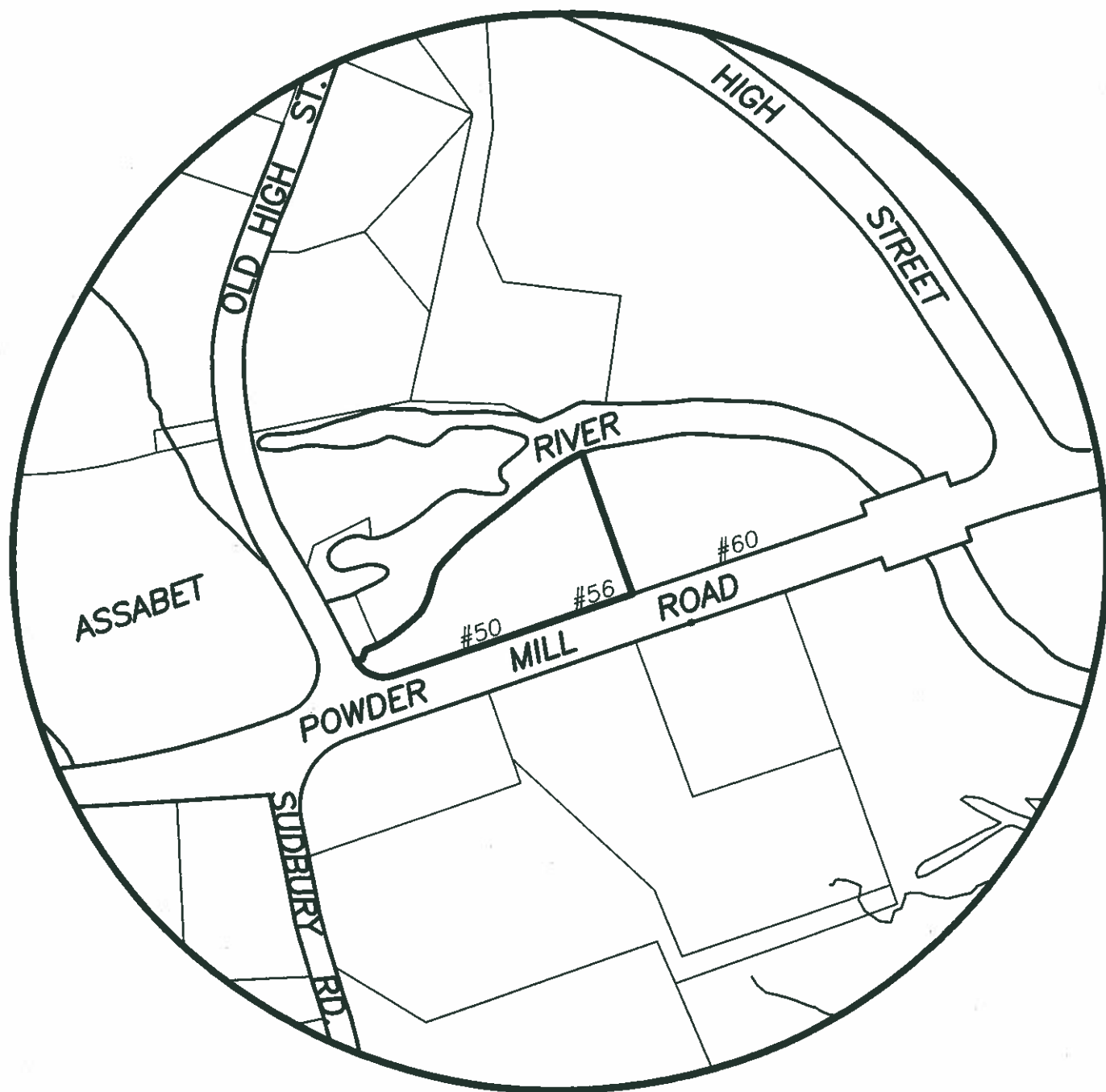
RENOVATED BUILDING CONFORMS
TO FAR REQUIREMENT OF ≤ 0.20

NOTE: REMOVAL OF BASEMENT
DECREASES FAR

REMOVAL OF 56 BLDG
DECREASES FAR



112510



LOCUS PLAN

SCALE: 1"=200'